Block Communications Inc.

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December 16, 2013

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Comments Regarding Amendment of Section 73.2555(e) of the Commission's Rules, National Television Multiple Ownership Rule, MB Docket No. 13-236

Dear Ms. Dortch:

I am writing for Idaho Independent television, Inc., Independence Television Company, Lima Communications Corporation, WAND(TV) Partnership, and West Central Ohio Broadcasting, Inc. (the "Block Companies") to express our strong support for the FCC's proposal to eliminate the UHF Discount exception to the national television multiple ownership rule in the above-referenced proceeding.[1] If anything, this rulemaking is overdue because the UHF Discount has been an outdated relic of the old analog broadcasting system for several years now.

Eliminating the UHF Discount now is necessary to preserve Congress's decision to limit national multiple ownership to 39% of television viewers. The Block Companies collectively own five full-power, 1 Class A, and five licensed low-power stations in mid-sized and small markets across America.[2] As dedicated local broadcasters, the Block Companies welcome the national multiple ownership cap of 39% national audience reach because it is an important bulwark that supports independent local broadcasters and promotes the FCC's paramount goals of diversity, competition, and localism in every TV market. Congress recognized the importance of this rule in 2004, when it stepped in to reduce the 45% limit that had been adopted by the FCC and insulated the national cap from further FCC review.[3] The FCC has a duty to implement the 39% cap that Congress enacted; it cannot and should not permit exceptions like the UHF Discount to swallow the rule.

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1 Amendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rule, *Notice of Proposed Rulemaking*, 28 FCC Rcd 14234 (2013) (the "*NPRM*").

2 These stations include WLIO(TV), Lima, Ohio; WDRB(TV), Louisville, Kentucky; WMYO(TV), Salem, Indiana, WAND(TV), Decatur, Illinois; KTRV(TV), Nampa-Boise, Idaho; WOHL-CD; WLQP-LP; WLMO-LP; and WFND-LP, W31BX-D, W40CV-D.

3 *Consolidated Appropriations Act, 2004*, H.R. 2673, 108th Cong. § 629 (2004) (the "*CAA*"); *see also Prometheus*, 373 F.3d 372 (3d Cir. 2004).

As recognized in the *NPRM*, the UHF Discount exception -- which may have made sense for inferior analog UHF TV channels – now threatens to severely undermine the 39% cap because today UHF stations are actually *more desirable* for DTV broadcasting than are VHF stations.[4] This means that the DTV transition has turned Congress's 39% cap into a *de facto* 78% ownership cap. It is only a matter of time before the major TV networks and the largest station groups begin acquiring UHF stations and growing far larger than Congress ever intended to permit. Already large station groups have begun exploiting the UHF Discount to purchase dozens of UHF stations, driving their true national audience reach to levels well above the national cap. Others are sure to follow. This is a grave threat to local broadcasters and the national network/affiliate system that has served this country well since the dawn of the TV age. If the UHF Discount permits these large station groups to grow out of control, the Commission's goals of diversity, competition, and localism will be damaged beyond repair. For these reasons, the FCC is right to propose elimination of the UHF Discount and it should complete this rulemaking without delay.

Immediate elimination of the UHF Discount will not be unfair to anyone. From the earliest days of the DTV transition, every broadcast engineer that examined the issue knew that VHF channels would present difficult challenges for DTV broadcasting and that UHF channels would provide superior signal coverage in the DTV world. That is why most stations that were assigned VHF channels sought to exchange them for available UHF channels. The number of commercial stations operating on VHF channels reached its peak in 2004 and 2005 and has declined by nearly 40% since.[5] Indeed, the exodus from VHF to UHF stations became so problematic that the FCC no longer processes requests for new VHF-to-UHF channel changes,[6] and the FCC commenced a rulemaking seeking ways to revitalize the VHF band.[7] Every broadcaster has understood for years that UHF DTV channels are superior to VHF DTV channels and that there is no longer any basis for a UHF Discount. Any broadcaster that tries to say differently today is simply not being honest. And that is why the market for UHF TV stations is robust and filled with buyers, with station groups announcing a record volume of station purchase activity.

Moreover, the FCC has been warning broadcasters for more than a decade that the DTV transition would remove any justification for the UHF Discount. As noted in the *NPRM*, the FCC's *1998 Biennial Review Order* explicitly informed broadcasters that the UHF Discount

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4 *NPRM*, 28 FCC Rcd at 14330-31.

5 *See* Broadcast Station Totals Excel Spreadsheet, *available at* http://transition.fcc.gov/mb/audio/newsite/datafiles/BroadcastStationTotals.xls

6 *See* Freeze on Filing of Petitions for Digital Channel Substitutions, Effective Immediately, *Public Notice*, DA-959 (May 31, 2011).

7 *See* Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF, *Notice of Proposed Rulemaking*, 26 FCC Rcd 16498 (2010).

would become obsolete after the DTV transition and was likely to be eliminated.[8] But the FCC's warnings about the UHF Discount's demise go back further than that. As early as 1996, the FCC was telling broadcasters that the UHF Discount was under intense scrutiny and that any broadcaster purchasing stations in reliance on the rule would acquire those stations only "subject to" any future revisions of the rule.[9] Thus, broadcasters in this century have had no reason or right to rely on continuation of the antiquated UHF Discount. And certainly those who have bought up dozens of UHF stations in the past 2 years should get no protection whatsoever from whatever grandfathering rule the FCC may adopt.

As the *NPRM* notes, the only sensible approach to broadcasting in the DTV era would be to offer an ownership discount to stations willing to continue operating on VHF Channels.[10] The Block Companies would support such a rule to ensure efficient utilization of both the VHF and UHF TV spectrum bands. In addition, the Block Companies do not object to a reasonable grandfathering period for TV station groups that acquired UHF stations during the analog era when those stations were truly weaker.[11] Any grandfathering rule, however, must prevent broadcasters from gaming the system to acquire more desirable DTV UHF stations at a discounted ownership level. No broadcaster that has acquired a UHF station since the close of the DTV transition should be entitled to any grandfathering whatsoever.

The time for abolition of the UHF Discount is now. UHF channels are more attractive for DTV broadcasting than their VHF counterparts and the days when the FCC needed special rules like the UHF Discount to encourage stations to use UHF channels are long gone. The longer the FCC leaves the UHF Discount in place, the greater the danger that the networks and large station groups will exploit the rule to exceed Congress's 39% national audience reach cap. As steward of Congress's decision to limit national ownership, the FCC would be derelict in its duty to protect local broadcasting if it allowed that to happen. The FCC should eliminate the UHF Discount without further delay.

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8 *See NPRM* at 14326, n.58 (citing 1998 Biennial Review Order – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MM Docket No. 98-35, *Biennial Review Report*, 15 FCC Rcd 11058, 11072-75, ¶¶ 25-30 (2000) ("*1998 Biennial Review Order*")).

9 *See* Implementation of Sections 202(c)(1) and 202(e) of the Telecommunications Act of 1996 9National Broadcast Television Ownership and Dual Network Operations), *Order*, 11 FCC Rcd 12374, 12375 (1996); *see also* Broadcast Television National Ownership Rules, MM Docket No. 96-222; Review of the Commission's Regulations Governing Television Broadcasting, MM docket No. 91-221; Television Satellite Stations Review of Policy and Rules, MM Docket No. 87-8, *Notice of Proposed Rulemaking*, 11 FCC Rcd 19949, 19951 (1996); *1998 Biennial Review Order*, 15 FCC Rcd at n.108.

10 *NPRM*, 28 FCC Rcd at 14332-33.

11 *See id.* at 14331-32.

Respectfully submitted,

Allan J. Block

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